

**Court of Appeals, State of Michigan**

**ORDER**

In Re Hanson Minors

Docket No. 264984

LC No. 2004-694210-NA

Helene N. White  
Presiding Judge

William C. Whitbeck, CJ

Alton T. Davis  
Judges

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On the Court's own motion, the Court orders that the April 18, 2006 opinion is hereby VACATED, and a new opinion is attached. The change appears in the last sentence of the new opinion.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

APR 27 2006

Date

*Sandra Schultz Mengel*  
Chief Clerk

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of PAIGE HANSON and JESSE  
HANSON, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellant,

v

MARK HANSON,

Respondent-Appellee.

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UNPUBLISHED

April 27, 2006

No. 264984

Oakland Circuit Court

Family Division

LC No. 2004-694210-NA

Before: White, P.J., Whitbeck, C.J., and Davis, J.

PER CURIAM.

Petitioner Department of Human Services appeals by delayed application for leave granted the trial court's opinion and order finding that termination of respondent Mark Hanson's parental rights was contrary to the children's best interest and denying the Department's petition seeking termination of Mark Hanson's parental rights. We reverse.

**I. Basic Facts And Procedural History**

Paige and Jesse are Mark Hanson's children with his ex-wife Pamela Hanson. Following the Hansons' divorce in June 2001, Mark Hanson was granted physical custody of Paige and Jesse Hanson. Pamela Hanson saw the children infrequently in the ensuing years.

In May 2004, the Department filed a petition seeking to place Paige and Jesse Hanson in the court's custody following allegations by Mark Hanson's stepdaughter that Mark Hanson had sexually molested her between 1996 and 2001 during the period he was married to Pamela Hanson, the child's mother. Mark Hanson subsequently pleaded guilty to five counts of second-degree criminal sexual conduct and one count of accosting children for immoral purposes in connection with the allegations. Mark Hanson was sentenced to five to 15 years in prison, his earliest release date being July 21, 2009.

At the bench trial on the petition, Mark Hanson admitted to the allegation in the petition pertaining to his criminal plea and stipulated to submission of the police report pertaining to the

allegations. The trial court found that the plea and evidence established the court's jurisdiction over the children and the statutory basis for termination of Mark Hanson's parental rights.

At the best interests hearing, the Department introduced into evidence Mark Hanson's criminal conviction and the March 16, 2005 psychological evaluation of Mark Hanson and the children. The evaluation indicated that the children were very attached to Mark Hanson. It also indicated that Mark Hanson minimized the severity of his sexual abuse of his stepdaughter, suggesting that the nine-year-old child was sexually aggressive. The evaluation concluded that Mark Hanson had little insight into his behavior and greatly minimized the severity of his abuse of his stepdaughter. The evaluation recommended that the court consider termination of Mark Hanson's parental rights.

Mark Hanson testified on his own behalf at the hearing, stating that he had been the children's sole caretaker during most of their lives and that he believed it was in their best interests that his parental rights to them not be terminated. He suggested that his sister could serve as a surrogate parent while he was incarcerated and could encourage and protect his parental bond with the children until he was released. Mark Hanson admitted that his behavior with his stepdaughter was wrong but testified that she was sexually aggressive, that she pursued him, and that his inappropriate conduct was limited to letting her touch his penis on a few occasions. He stated that he had taken steps to ensure that he would not repeat his behavior and was undergoing counseling.

On May 9, 2005, Pamela Hanson died in an automobile accident. On May 24, 2005, Mark Hanson wrote to the trial court, pleading that his parental rights not be terminated. Mark Hanson stated that he took full responsibility "for the incidents that took place" and deeply regretted his actions. He added that he was undergoing rehabilitation while incarcerated and asked that the trial court not terminate his parental rights over his children.

On July 18, 2005, the trial court issued its opinion and order, finding that termination of Mark Hanson's parental rights to Jesse and Paige Hanson was contrary to their best interest. The trial court noted the death of the children's mother, their attachment to their father, and the court's desire to not cause the children any further heartache. The trial court pointed out the ways in which the evaluation failed to support its recommendation in favor of termination of Mark Hanson's parental rights. The trial court concluded by finding that termination of Mark Hanson's parental rights was contrary to the children's best interests.

## II. The Best Interests Of The Children

### A. Standard Of Review

The Department contends that the trial court clearly erred when it concluded that termination of Mark Hanson's parental rights was contrary to the children's best interests. Under MCL 712A.19b(5), if grounds for termination are established, the trial court must order termination "unless the court finds that termination of parental rights to the child is clearly not in the child's best interests." In determining whether the child's best interests precludes termination of parental rights, a trial court may consider evidence introduced by any party or may conclude, based on the whole record proffered to establish the ground for termination, that

termination is clearly not in the child's best interest.<sup>1</sup> The primary beneficiary of this analysis is to be the child.<sup>2</sup> This Court reviews the trial court's decision for clear error.<sup>3</sup>

## B. The Trial Court's Decision

In reaching its opinion that termination was contrary to the children's best interests, the trial court ignored the findings of Mark Hanson's psychological evaluation, which concluded that he had little insight into his behavior and greatly minimized the severity of his abuse of his stepdaughter. The evaluation also questioned Mark Hanson's claim that he would not offend again. The trial court acknowledged the psychological evaluation's recommendation that Mark Hanson's parental rights be terminated but determined that the evaluation's recommendation was founded on faulty grounds.

First, the trial court found that the recommendation of termination was based solely on Mark Hanson's criminal record and not on any psychological opinion. However, a review of the evaluation shows that the recommendation was based on the performing psychologist's interview with Mark Hanson, clinical testing, and review of clinical and court files. The evaluation clearly expresses an opinion regarding Mark Hanson's psychological state:

[Mark Hanson is] in denial about his offending behavior and his presentation projected much responsibility on the victim, even though he claimed to take full responsibility for his actions. He had very little insight into his offending behavior, and although he claims that he would not offend again, it remains highly [sic] questionable. In regards to his belief sytem [sic] and his stating that he felt he could "keep his family together" despite his abuse of his stepchild, all the while professing that he was committed to his marriage, suggests poor reality testing, and grossly impaired judgement [sic].

Thus, there is a psychological opinion expressed in the evaluation that, contrary to the trial court's conclusion, is not based solely on Mark Hanson's criminal record.

Second, the trial court argued that certain statements in the evaluation expressing concerns over reunification with the children were not appropriate for consideration in Mark Hanson's case. However, a review of the statements cited by the trial court shows that these statements concern the reunification of the children with their mother, not with Mark Hanson.

Third, the trial court questioned the failure of the evaluation to consider opinions of the children's therapists regarding reunification or to question the children themselves. A review of the evaluation shows that the children were interviewed and questioned about reunification. Further, the reunification at issue was with the children's mother, not Mark Hanson, and the trial court's consideration of this portion of the evaluation with respect to Mark Hanson was misplaced.

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<sup>1</sup> *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 356-357.

Fourth, the trial court disputed the statement in the evaluation that Mark Hanson denied the allegations in the petition where the remainder of the paragraph contains statements of Mark Hanson's admissions. However, the admissions Mark Hanson made in the evaluation are not the same as those alleged in the petition. The petition alleged that Mark Hanson's acts included forcing his stepdaughter to suck his penis, rubbing his penis on her genitals, and forcing her to watch pornographic movies with him. At his evaluation, Mark Hanson contended that his stepdaughter had pursued him, and he minimized the severity of his sexual abuse of the child. Thus, the evaluation's characterization of Mark Hanson's statements as a denial of the allegations in the petition was certainly not erroneous.

Finally, the trial court concluded that Mark Hanson was remorseful and that his statements regarding his stepdaughter's sexual propensity were intended merely to explain, and not defend or excuse, his conduct. However, the trial court ignored the concern expressed in the evaluation that Mark Hanson, in making these comments, minimized the severity of his own misconduct.

The trial court also found that the children were not at risk because of Mark Hanson's incarceration. However, in electing not to terminate respondent's parental rights, the trial court ignored the fact that keeping the children in the court's custody while Mark Hanson completes his sentence, which could keep him imprisoned until 2019, would result in a lack of permanency for the children. Although Mark Hanson claims that his sister could care for the children during his incarceration, his sister did not present herself as an alternate caregiver and, in fact, had had the children removed from her care when they were originally placed with her when first taken into the court's custody.

In light of the trial court's erroneous findings with respect to the psychological evaluation and its failure to consider the consequences in keeping the children in the court's care while Mark Hanson completed his sentence, we conclude that the trial court clearly erred when it concluded that termination of Mark Hanson's parental rights was contrary to the children's best interests and dismissed the Department's permanent custody petition.

Reversed and remanded for entry of an order terminating Mark Hanson's parental rights.

/s/ Helene N. White  
/s/ William C. Whitbeck  
/s/ Alton T. Davis